COURT OF APPEAL FOR ONTARIO
SUBMITTED/SOUMIS: 25/Mar/2026
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REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

Court File No. COA-25-OM-0346
(DC-24-00000525-00JR)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ELAINE WELKOFF

Moving Party
(Applicant)

- and -

HEALTH PROFESSIONALS APPEAL AND REVIEW BOARD,
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO,
and DR. LEIGH SOLOMON

Responding Parties
(Respondents)

REPLY FACTUM OF THE MOVING PARTY ELAINE WELKOFF
(Motion for Leave to Appeal from the Divisional Court judgment to the Court of Appeal for Ontario returnable in writing)

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PART I - INTRODUCTION

1. This is the Reply Factum of the Moving Party Elaine Welkoff ("Ms. W") to the Factum of the Responding Party Dr. Leigh Solomon ("Responding Factum/Respondent").

PART II - SUBMISSIONS IN REPLY

2. The Respondent's Factum relies on a strategic mischaracterization of the record. Deference to specialized tribunals is a settled principle, but it is not a license to ignore the evidentiary record, and it is not meant as total blind deference.

(A) THE RESPONDENT'S STRATEGIC MINIMIZATION OF LEGAL ISSUES

3. Ms. W joins issue with the Respondent's characterizations in this motion; these references are necessary to rebut the Respondent's **calculated attempts to recast** objective legal errors into mere subjective "dissatisfaction". Throughout the Respondent Factum (paras 1, 2, 6, 21) the Respondent characterizes Ms. W's evidence as mere "earnestness", "disagreement", or a "lack of satisfaction". This new repetitive framing is a **rhetorical shield** intended to **insulate** manifest legal errors from appellate review. The Respondent's framing **systematically omits** the evidentiary foundation of the record in the following ways:

4. **(i) Substance over "earnestness"** (para 1): The Respondent's characterization of this matter as a 'customer service complaint' is **textbook straw man** designed to evade the gravity of a **documented breakdown** in the standard of care. The "true content" of the medical record is a substantive requirement of professional practice. To devalue Ms. W's direct evidence as an emotional "recounting" is to ignore the evidentiary foundation of a claim involving serious harm.

5. **(ii) Evidence vs. Belief**: As documented in the patient experience report (Motion Record, pg. 56), the doctor initiated the encounter with personal labeling - dismissing the medical visit as "loneliness" - rather than performing a standard investigation, a failure of professional duties which continued throughout the interactions. By framing **documented medical falsehoods** and "**non-doctoring**" as a matter of personal "belief" (Responding Factum, para 6), the Respondent **conflates evidentiary proof with subjective opinion** to avoid the public interest in accurate medical records. Accuracy is the baseline of medical safety and professional accountability.

6. **(iii) Objective errors over "disagreement/lack of satisfaction":** (Responding Factum, Paras 2 & 21)**:** A "serious" concern is established where, as here, the regulator's decision is **demonstrably untethered** from its own record. The Respondent's emphasis on the "two specialized tribunals" ignores that a **palpable**

and overriding error is not cured by repetition. Ms. W is pursuing this motion not because of a "lack of satisfaction", but because of a **manifest breakdown of the judicial process**: a decision that admitted a complete lack of evidence for a diagnosis, yet imposed remedial sanctions based upon it. This is a **failure of reasoned decision-making**, not a matter of personal disagreement.

7. Ms. W's accounting (motion record, pgs. 55-66) is based on personal knowledge and is supported by contemporaneous notes from other staff (moving motion, pgs. 97-106). These records provide an objective foundation that contradicts the respondent's claim of professional medical encounters. To dismiss this documented proof as "earnestness" is an attempt to shield a manifest injustice from review. The lower decision-makers' failure to engage with this substantiated record - while simultaneously admitting a **total absence of evidence** for the doctor's own diagnosis - constitutes a palpable and overriding error.

(B) RESPONDENT'S STRATEGIC NARROWING AND MISREPRESENTATION OF THE ISSUES

8. The Respondent attempts to rewrite the history of these proceedings by **strategically narrowing** the focus of this motion. This filtering tactic seeks to present a **logically incoherent version of the record** - a sanitized narrative designed to shield lower-court errors from appellate oversight. The following examples of these distortions are representative and not an exhaustive list.

i) Manufacturing "Confirmations" by Ignoring the Core Record

9. At paragraphs 13 and 16 of the Responding Factum, the Respondent asserts that Ms. W "confirmed" an **omitting, fragmented, and rearranged** version of her original complaint. To "prove" this, the Respondent relies not on any statement or document authored by Ms. W, but on a **judicial summary** within the Divisional Court Decision (at para 11).

10. **The "Bootstrapped" Record:** By citing a judicial summary which merely recited the HPARB's interpretation of the CPSO's initial distortions, the Respondent relies on a cumulative mischaracterization. Each successive third-party summary has further omitted and rearranged Ms. W's actual grievances—with this latest iteration being the most egregious.

11. A "chain of summaries" cannot replace the primary evidence of the Original Complaint to "bootstrap" a party admission into existence. A third-party summary is a hearsay narrative; it cannot be used as an admission against Ms. W as the author of the original record.

12. The Court must look to the **Original Complaint** (Motion Record, pgs. 55-66), which remains the only authentic record of the issues raised. The Respondent's claim of "confirmation" is a tactical distortion and a new, inaccurate assertion that is demonstrably unsupported by the record.

(ii) Systematic Departures from the Record:

13. **Joining Issue on "Negotiation" vs. Ex Parte Determination:** Ms. W joins issue with the Respondent's characterization of the 3-month gap as a period of "negotiation" (Responding Factum, para 47). This is a post-hoc narrative flatly contradicted by the record. **The Committee met at 10:00 a.m. on May 9, 2023; by 10:19 a.m. that same day —a 19-minute window— the ICRC issued a final "determination" and a formal Remedial Agreement to the Doctor** (motion record, pg. 109) There was no negotiation; there was an ex parte communication of a pre-determined outcome that excluded Ms. W entirely.

14. **The Procedural Ambush:** This 79-day "black out" created a manifest informational inequality. This initial breach of fairness—undiscovered by Ms. W until she received the CPSO file via HPARB—cannot be "cured" by the later passage of time. The blackout was not a mere delay; it was a **direct interference with Ms. W's statuary and medical agency**, granting the respondent doctor an exclusive, secret advantage to finalize a "no-evidence" settlement.

15. **The New "11-Month" illogic:** At paragraph 50, the Respondent introduces a new and irrelevant argument suggesting that the 11-month wait for a July 2024 hearing somehow "prepared" Ms. W or cured the initial prejudice. **This is a logical fallacy.** Having "time to prepare" for a hearing that Ms. W. did not even know would be required during the 3-month black out is a procedural impossibility. During that period, Ms. W was forced to contemplate various hypothetical scenarios and legal paths without the foundational facts. One cannot "prepare" for a specific legal battle while the Regulator is actively concealing the very decision that dictates which battle must be fought.

16. **The "Notably" Misdirection**: The Respondent "notably" comments (para 49) that Ms. W. had ample time after the blackout. This ignores the **forced election** the Applicant had to make in just two days. Upon finally receiving the July decision, Ms. W immediately began drafting a Statement of Claim for civil Court. However, her research revealed a procedural trap: a court would likely dismiss her claim for **prematurity,** effectively forcing her into an HPARB review she had not originally planned.

17. **The Inception of the HPARB Review:** Consequently, Ms. W requested a Board Review on July 30, 2023–only 48 hours after receiving the decision. This prompt action proves that the subsequent 11-month wait

for a hearing was an administrative consequence of the Board's schedule, not a period of "preparation" that could somehow retroactively cure the **procedural illegality** of the initial 3-month blackout. The harm was done the moment Ms. W's agency was bypassed; the later passage of time is legally irrelevant to the breach. **Furthermore, it left her medically vulnerable—unable to seek or find unbiased alternative healthcare using her own medical records while her health continued to seriously worsen.**

(iii) Mischaracterization of Case Law by Respondent: *Montour vs. HPARB* and *West Whitby*

18. **The *Montour* Parallel:** At pg. 52 Ms. W originally cited *Montour* (to demonstrate that even a deferential standard required a "**rational chain of analysis**." At paragraph 34 of Responding Factum, the Respondent attempts to argue for a "double degree of deference" to insulate the Committee's decision. This is a legal straw man. Notably, in *Montour* - a case where counsel for the Respondent Doctor and the CPSO in this case were the same counsel of record for the Board and College in the *Montour* case - the Divisional Court **rejected** this high-deference shield. The Court quashed the decisions specifically because they **lacked a rational chain of analysis** and were **"unsupported by the medical records**" (at para 61). This directly parallels the present case's reliance on a "no-evidence" diagnosis that contradicts the physical record.

19. **The *West Whitby* Misdirection:** The Respondent's strategic emphasis on *West Whitby Landowners v. Elexicon Energy* (Respondent Factum, paras 34-35) is a further misdirection. The Respondent failed to substantively address this authority until Ms. W cited it (pgs. 52, 53) to establish the **modern, flexible threshold for leave**. While the Respondent now recites the general criteria as a generic shield, they ignore that leave was granted in West Whitby specifically to prevent administrative decisions from being insulated from oversight. Reciting the test for leave does not cure a manifest breakdown in the administration of justice, nor does it explain how a documented "no-evidence" diagnosis along with the other very clear substantiated grounds for appeal in this motion fail to meet the threshold the Respondent identities.

(iv) Failure to Address the Evidentiary Record

20. **Failure to Investigate Documented Falsehoods**: At paragraph 41, the Respondent asserts that the CPSO "explicitly considered" Ms. W's concerns regarding medical falsehoods. This is a **patent misstatement of the record**. The Respondent relies on a sanitized judicial summary to "cure" a total failure to investigate the primary evidence. The investigative file confirms that the CPSO **explicitly invited** Ms. W to continue providing to the full complaint/evidence, and further confirmed receipt of these materials as part of the formal complaint. Yet the Committee subsequently ignored a massive volume of primary data, including: **i) 13 separate voicemails and follow-up emails** detailing shocking fabrications within the Doctor's formal Response; **ii) Additional evidence** provided after Ms. W discovered the fictionalized medical notes; **iii)** the

initial **Patient Experience Report** (motion record, pgs. 55-63) which established the foundational narrative, and **iv) the contemporaneous nurse notes** (motion record, pgs. 97-106) which substantiate Ms. W's account. By bypassing this authentic evidentiary trail in favour of a 19-minute summary determination, the CPSO did not "consider" the complaint— they suppressed it.

21. **Failure to Join Issue on the Core Complaint:** The Respondent's assertion of "explicit consideration" is a strategic evasion of the actual record. Throughout the process, Ms. W repeatedly submitted —initially to the CPSO and later in her submissions to HPARB (motion record, pgs. 120-122)—that her key issues were being omitted, guised, and reorganized. The CPSO never directly responded to these specific key issues, a failure later compounded by HPARB's endorsement of the CPSO's adjusted version. This process of continual re-drafting has culminated in a **newer version now presented by the Respondent Doctor's counsel** as "explicitly considered." This has effectively replaced Ms. W's actual grievances with an **altered narrative**. By substituting the record with this narrative, the Respondent bypassed the very "Patient Experience" that the CPSO is mandated to oversee. Under the *Vavilov* framework, a decision-maker must "grapple" with the central arguments made by the party (*Vavilov*, para 128). By ignoring the documented evidence of fabricated notes and failing to engage with the key issues raised, the Board failed its duty to provide an intelligible and justified decision.

22. **Tactical Inconsistency of the Respondent**: As confirmed in CD audio recording of the hearing. The Respondent's position on the "uniqueness" of these errors has shifted to suit the stage of the proceedings. At the Divisional Court, when Ms. W challenged how a doctor's version could be the "utterly complete opposite" of her reported experience, the Respondent argued that such conflicting versions are common and "not unique." Now, to resist this Motion for Leave, the Respondent asserts the exact opposite: that these allegations are "specific and unique to the parties" and lack public importance. This tactical inconsistency confirms that the Respondent's "private dispute" argument is a convenient invention intended to shield a systemic failure of professional accountability. This is not a private matter; it is a widespread problem of public importance regarding how regulators and courts handle the "Patient Experience" they are mandated to oversee.

23. **Failure to Join Issue on Systemic Prejudice**: The Respondent's Factum fails to join issue with Ms. W's submissions (motion factum pgs. 8-9) regarding the **systemic prejudice** and the "**status-based**" marginalization inherent in the 'poisoned record'. By remaining silent, on the documented reality of how "status" and "stigma" lead to a withdrawal of legal rights in mental health units, Respondent implicitly concedes that this case transcend a private dispute. This silence underscores a matter of Public Importance: whether regulators are permitted to ignore systemic bias when it is staring them in the face.

(C) THE RESPONDENT'S RELIANCE ON STATUTORY FORM OVER SUBSTANCE

24. The Respondent devotes 13 paragraphs (Respondent Factum, paras 23-35) to generate recitation of the statutory framework. This "**statutory dump**" serves only to obscure the central issues: a framework is not a shield for logical incoherence, procedural unfairness and errors in law. **Misapplication of Section 26 and 29(2)**: While the *code* grants the ICRC discretion under sections 26 and 29(2), that discretion must be exercised within the **factual constraints** of the record; Discretion is not a licence to ignore documented evidence. By emphasizing the "breadth" of the Committee's power, the Respondent attempts to insulate a decision that lacks a "rational chain of analysis —the very standard required by Montour. Reciting the statute does not cure a remedy based on a "no evidence" diagnosis that contradicts the physical record. **Abdication of the Board's Mandate (Section 33 & 35)**: The Respondent cites the Board's review powers under sections 33(1) and 35(1) but fails to address how the Board fulfilled its mandate. A "review" that acknowledges a decision lacks an evidentiary basis, yet upholds it anyway, is not an exercise of jurisdiction—it is an abdication of it. When a manifest breakdown in logic occurs, the Board's statutory duty is to intervene, not to provide a rubber stamp for a flawed process.

25. **The Respondent's "Ghost Findings" Straw Man**: At paragraphs 43-45 Respondent Factum, the Respondent attempts to justify the Remedial Agreement by citing "findings" that are entirely untethered from the ICRC decision. This is a **new and logically incoherent** characterization. The Respondent fails to cite a single record to support these purported findings because, as the Committee itself admitted three times, there was "**no evidence in the medical records**" to support the diagnosis underpinning the Agreement (CPSO decision, pgs. 5 & 7; motion record, pg. 42).

26. **Diversion from Professional Misconduct**: The Respondent's attempt to equate the documented professional misconduct of the Doctor with the remedial result is a tactical distortion. Findings of the Doctor's behavioural failings - which the Committee admitted occurred - constitute a breach of professional duties. By "recycling" these serious failures into an irrational Remedial Agreement based on a "no evidence" diagnosis, the regulator improperly mitigated the professional consequences owed by the Doctor at the expense of public safety.

(D) THE EXTRAORDINARY BREACH OF JUDICIAL NEUTRALITY

27. **Failure to Join Issue (Prejudgment and Bias):** The Respondent fails to join issue with the specific procedural irregularities raised by Ms. W, offering only a single-sentence characterization of the proceeding as

a “typical oral hearing.” As confirmed in the CD audio recording of the hearing, the Divisional Court panel demonstrated a manifest prejudgment. This is evidenced by a presiding judge’s admission that he “did not expect to be there” and the panel’s statement that they only reviewed materials “to the extent they thought helpful.” While the panel appeared to briefly engage with the Respondent’s specific citations, they simultaneously refused to engage with Ms. W’s Case Center Index or the electronic evidence she had prepared, instead changing the subject when she attempted to reference the record.

28. **The “Copycat” Decision and the 45-Minute Exercise:** The panel’s post-hearing request (motion record, pg. 117) for the “Caution”—which HPARB confirmed the Court already possessed (motion record, pg. 118)—is a **“smoking gun”** of a procedural breakdown. It proves the panel presided over the hearing without reviewing the core evidence ordered by a previous motion judge (motion record, pg. 115-116). A “review” that treats a **45-minute oral argument** as a mere clock-watching exercise—concluding with a dismissive, **“well you were 45 minutes as you said you would be”**—is a denial of the right to be heard. The resulting judgment was a mere **“Copycat Decision”** that ignored Ms. W’s foundational pleadings and the documented errors in the medical record.

29. **Public Importance of Judicial Integrity:** To characterize the correction of such a fundamental breakdown as an “extraordinary remedy” is a misdirection. The truly "extraordinary" nature of this case is the manifest injustice of a hearing that was neither fair nor seen to be fair. Appellate intervention is the only way to ensure the public's confidence in the administration of justice is maintained.

PART III - SUMMARY/CONCLUSION

31. **The Necessity of Leave:** This proposed appeal involves matters of such gravity to the **administration of justice** that leave should be granted.

32. **Judicial Notice** : The necessity of granting leave in this matter transcends the interests of the immediate parties. At its core, this case challenges two pervasive systemic failure that the Court is invited to take Judicial Notice of as matters of Public Importance:

(i) Status-Based Marginalization: The systemic prejudice inherent in a "Poisoned Record," where the "status" of a patient in a medical unit leads to a virtual withdrawal of legal rights and the endorsement of fabricated narratives.

(ii) The Pathologizing of Trauma: The fundamental error of treating a survival response to **compounded and multi-layered trauma** as a "mental illness" rather than a human **injury**. To allow a "no-evidence" diagnosis to stand is a manifest breakdown of the judicial process.

33. **The Divisional Court's Error of Law:** The Divisional Court committed a reviewable error of law by failing to perform its statutory function of independent judicial review. By adopting a **"copycat" process**—which mirrored the Respondent's own pleadings—the Court expressly declined to review the evidentiary record under the guise of "not substituting findings." This failure to identify a **"no-evidence" diagnosis** and the manifest **breaches of procedural fairness** in the record below represents a fundamental breakdown in oversight that only this Court can correct.

34. **The Accountability Gap:** This is not a case about clinical mental illness; it is a case about a system that pathologizes human injury—including institutional harm—to **avoid accountability** and silence the victim. To allow "Poisoned Records" to persist is to sanction a **"revolving door"** of systemic harm that drains public resources and forces vulnerable sufferers into a cycle of re-traumatization until they simply "give up." The integrity of Ontario's regulatory system depends on the Court's refusal to allow demonstrably false records to become permanent, institutionalized barriers to justice.

PART IV - Order Sought

35. For the reasons above, the Moving Party Elaine Welkoff respectfully requests that this Honourable Court:

(a) Grant leave to appeal the decision of the Divisional Court dated August 8, 2025;

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of March, 2026.

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Elaine Welkoff
Moving Party

SCHEDULE “A”

LIST OF AUTHORITIES

N/A

SCHEDULE “B”

RELEVANT STATUTES

N/A